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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,221	05/22/2007	Hans B. Bauerfeind	3643-0121PUS1	6953

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BIRCH STEWART KOLASCH & BIRCH  
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FALLS CHURCH, VA 22040-0747

EXAMINER
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NICHOLSON, KERI JESSICA

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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08/20/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,221	<b>Applicant(s)</b> BAUERFEIND ET AL.	
	<b>Examiner</b> KERI J. NICHOLSON	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/2/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

This is the initial Office Action based on non-provisional application 10/590,221 filed August 22, 2006, which is a national stage entry of PCT/EP05/01941 filed February 23, 2005, which claims foreign priority to DE 10 2004 009 210.9 filed February 25, 2004. An information disclosure statement was filed October 2, 2006 and considered August 13, 2008 and the Oath or Declaration was filed May 22, 2007. A preliminary amendment was filed August 22, 2006 which amended claims 1-5 and added new claims 6-11; claims 1-11 are currently pending.

#### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

2. The information disclosure statement filed October 2, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. A copy of foreign patent CH 213 343 A was not submitted. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minogue et al. (U.S. Patent Pub. 2002/0128686) in view of Bray (U.S. Patent 6,520,893). Minogue discloses an elastic bandage (belt, 25) comprising electrodes (26/27) connected to a detachable electric stimulation device (signal generator, 28) by means of lead wires (cables, 59/60) such that the elastic region of the bandage bearing the electrodes is covered on its outside by a pocket (formed from stitching together outer layers, 49 with edging braid, 51) containing a resilient cushion (foam layer, 50). However, Minogue fails to explicitly teach that the pocket of resilient foam is less elastic than the bandage or that the resilient cushion consists of an inflatable tube.

Bray discloses a belt (20) comprising an inflatable air chamber (32) positioned within a pocket formed between two sides (28/30) and a backing (36) having much less elasticity than the inner side (28) and positioned adjacent to the inflatable air chamber so that when the inflatable air chamber is inflated, it expands away from the backing and toward to inside (Figs. 3-4; column 3, lines 2-30). At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the bandage taught by Minogue such that the pocket contains an inflatable air chamber and a back panel that is less elastic than the bandage as taught by Bray for the purpose of applying pressure on the electrodes with respect to the user.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI J. NICHOLSON whose telephone number is 571-270-3821. The examiner can normally be reached on Monday - Thursday, 8am-5pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached at 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KJN  
/Keri J. Nicholson/  
Examiner, Art Unit 3772  
8/14/2008

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772